

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

THE STATE OF TEXAS, et al.,

Plaintiffs,

v.

GOOGLE LLC,

Defendant.

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Civil Action No. 4:20-cv-00957-SDJ

**GOOGLE LLC'S BRIEF IN RESPONSE TO PLAINTIFFS' APRIL 23, 2024 BRIEF TO  
THE SPECIAL MASTER**

Google respectfully submits this Brief in Response to Plaintiffs' Brief to the Special Master dated April 23, 2024, ECF No. 407. Plaintiffs' Brief raises two issues: (1) a proposed modification to this Court's scheduling order, and (2) a potential challenge to Google's clawback of two documents. In light of the Court's Order directing Plaintiffs to file a formal motion to modify the scheduling order, ECF No. 422, this Brief addresses only the second issue.

Plaintiffs' Brief contemplates a challenge to Google's privilege claims with respect to two Google-produced documents: Exhibit 101 to an April 17, 2024 deposition, Bates-numbered GOOG-AT-MDL-016487180 through GOOG-AT-MDL-016487273 (the "April 17 Claw Back"); and a document Bates-numbered GOOG-AT-MDL-015184906 through GOOG-AT-MDL-015184910 that was discussed in connection with an April 19, 2024 deposition (the "April 19 Claw Back"). The clawed-back portions of the April 17 Claw Back fall squarely within the attorney-client privilege, and the entirety of the April 19 Claw Back is protected by the work product and attorney-client privileges.

The April 17 Claw Back is a 94-page draft document discussing potential updates to the external description of the AdX auction. A Google in-house attorney is listed on the first page of the document as a member of the "team" that authored the document, and in her review of the document she left comments and edits containing legal analysis and advice concerning the issue of how to describe the AdX auction. Google has narrowly applied redactions to the 94-page document to protect those communications and edits containing legal advice.

The April 19 Claw Back is a comment-notification email containing comments made in a separate document entitled, in part, "Seeking legal guidance." This underlying two-page document was drafted at the direction of Google in-house counsel to—as indicated in the document's title—seek legal guidance from Google's outside counsel (including the firms Axinn,

Veltrop & Harkrider and Slaughter & May). It has been withheld from production on the basis of work product and attorney-client privilege. Therefore, the comments on this underlying document, reflected in the April 19 Claw Back, likewise are privileged.

Since Plaintiffs filed their opening Brief, the parties have met and conferred, and Google has explained to Plaintiffs its positions with respect to the clawed-back documents and has agreed to provide Plaintiffs with additional information, including a privilege log for these two clawed-back documents and the separate document underlying Google's claims concerning the April 19 Claw Back. To the extent that Plaintiffs proceed to challenge any or all of these documents according to the provisions set forth in the Confidentiality Order, ECF No 182, Google will respond to Plaintiffs' arguments at that time.

Dated: April 26, 2024

Respectfully submitted,

/s/ R. Paul Yetter

R. Paul Yetter  
State Bar No. 22154200  
YETTER COLEMAN LLP  
811 Main Street, Suite 4100  
Houston, Texas 77002  
(713) 632-8000  
pyetter@yettercoleman.com

Justina Sessions  
FRESHFIELDS BRUCKHAUS DERINGER LLP  
855 Main Street  
Redwood City, CA 94063  
(650) 461-8276  
justina.sessions@freshfields.com  
ATTORNEYS FOR DEFENDANT GOOGLE LLC

**CERTIFICATE OF SERVICE**

I certify that, on April 26, 2024, this document was filed electronically in compliance with Local Rule CV-5(a) and served on all counsel who have consented to electronic service, per Local Rule CV-5(a)(3)(A).

/s/ R. Paul Yetter  
R. Paul Yetter